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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

TOYOTA MOTOR SALES, U.S.A., INC., Plaintiff and Respondent, v. DIMITRIOS P. BILLER, Defendant and Appellant.	B234763 (Los Angeles County Super. Ct. No. SC100501)

APPEAL from the judgment of the Superior Court of Los Angeles County. John L. Segal, Judge. Affirmed.

Dimitrios P. Biller, in pro. per., for Defendant and Appellant

Littler Mendelson, Alan B. Carlson, Fermin H. Llaguno, Robert J. Wilger and Michael Gregg for Plaintiff and Respondent.

* * * * * * * * * *

Defendant and appellant Dimitrios P. Biller challenges the trial court's order affirming an arbitration award and entering judgment in favor of plaintiff and respondent Toyota Motor Sales, U.S.A., Inc. (Toyota). Toyota had sued defendant in Los Angeles Superior Court, and defendant later sued Toyota in federal district court. Both courts granted Toyota's motions to compel arbitration, and the two lawsuits were resolved in a consolidated arbitration proceeding. Both courts affirmed the consolidated arbitration award. The United States Court of Appeal for the Ninth Circuit recently affirmed the district court's order affirming the arbitration award in *Biller v. Toyota Motor Corporation* (9th Cir., 2012) 668 F.3d 655 (*Biller*). We conclude the doctrine of res judicata applies and therefore affirm.

BACKGROUND

We briefly summarize the pertinent facts. Defendant worked as in-house counsel for Toyota in California from 2003 to 2007, handling primarily product liability matters. Disagreements arose between defendant and Toyota, and they agreed to mediate their dispute. In September 2007, defendant and Toyota executed a written settlement agreement titled "Confidential Severance Agreement and General Release of All Known and Unknown Claims" (Severance Agreement). The Severance Agreement provided for the payment of money to defendant and a mutual release of claims, and it required defendant to maintain the confidentiality of certain information identified as confidential to Toyota, among other provisions.

In paragraph 6 of the Severance Agreement, defendant and Toyota agreed to binding arbitration as their exclusive remedy for the resolution of "all known and unknown" claims relating to the "subject matter, interpretation, application, or alleged breach" of the Severance Agreement, as well as the arbitrability of any claim or dispute. The parties retained the option to seek injunctive relief in a court of competent jurisdiction.

Paragraph 6.2 provides, in relevant part, that: "The arbitration shall be held in accordance with the rules and regulations of Judicial Arbitration and Mediation Services (JAMS) pertaining to employment disputes. . . . [T]he arbitration shall be

final and binding upon the Parties and shall be the exclusive remedy for all Arbitrable Claims. The Arbitrator is required to follow applicable law and case precedent of the jurisdiction where [defendant] last worked for [Toyota] and will have full authority to award any relief available to be awarded had the dispute been brought in any other forum such as a federal or state court. The Arbitrator will issue with his/her award a written decision sufficient to permit limited judicial review to enforce or vacate the arbitration award."

Paragraph 8.4 of the Severance Agreement provides: "This Agreement shall be governed by and construed in accordance with the laws of California; provided, however, that *the arbitration agreement in Paragraph 7 (Dispute Resolution) of this Agreement will be governed by the Federal Arbitration Act unless it is found by a decision maker of competent jurisdiction not to be governed by the Federal Arbitration Act*, in which case it will be governed by California law." (Italics added.)

After leaving Toyota, defendant started a consulting company in which he offered seminars on various legal topics. The website defendant established for his company mentioned the products liability litigation he was involved with while working for Toyota. Toyota believed defendant made improper disclosures of privileged attorney-client information and/or confidential information, as defined by the Severance Agreement.

In November 2008, Toyota sued defendant in superior court, seeking an injunction to prevent further disclosures by defendant of its confidential information. Defendant answered and filed a cross-complaint against Toyota, seeking to enjoin interference with his consulting business. Toyota petitioned to compel arbitration and the superior court granted the petition. The Honorable Gary L. Taylor (ret.), of JAMS, was appointed the mutually agreed-upon arbitrator.

In July 2009, defendant sued Toyota in federal district court for violation of the Racketeer Influenced and Corrupt Organizations Act (RICO), as well as for constructive wrongful discharge, intentional infliction of emotional distress and defamation. Toyota moved to dismiss the RICO claim and to compel arbitration of the

remaining claims. The district court dismissed the RICO claim and ordered the remaining claims to arbitration. The parties stipulated to consolidate the arbitration proceedings before Judge Taylor. Defendant and Toyota, in accordance with JAMS rules, submitted notices of claims specifying all claims to be resolved in the arbitration, which included their respective claims and defenses from both the federal and state court actions.

The parties initially sought a ruling from Judge Taylor on the validity and enforceability of the Severance Agreement, and he determined it was enforceable. Thereafter, Judge Taylor allowed discovery and ruled on various pre-arbitration motions. The consolidated arbitration was held over a period of two weeks in November 2010, with 20 witnesses testifying.

Judge Taylor found in favor of Toyota on its claims for breach of contract, conversion and unauthorized computer access. The final award consisted of a 15-page statement of decision explaining the bases for the award, which included liquidated damages and punitive damages awarded to Toyota, and also imposed a permanent injunction against defendant regarding the disclosure of Toyota's confidential information.

Toyota moved in federal court to confirm the arbitration award. Defendant moved to vacate the award. The district court granted Toyota's motion to confirm the arbitration award and permanent injunction, and denied defendant's request for vacatur, entering judgment in favor of Toyota on March 21, 2011. Defendant appealed to the Ninth Circuit.

Toyota also moved in state court to confirm the award. Defendant opposed, once again seeking vacatur. In May 2011, the superior court affirmed the arbitration award and permanent injunction, entering judgment in favor of Toyota on May 19, 2011. This appeal followed. During the pendency of this appeal, the Ninth Circuit issued its ruling in *Biller*, affirming the district court's confirmation of the arbitration award. Toyota filed a motion requesting this court to take judicial notice of the published decision in *Biller*, as well as an unpublished order by the Ninth Circuit

denying defendant's request for sanctions against Toyota. We granted the motion. (Evid. Code, §§ 451, subd. (a), 452, subd. (d).)

DISCUSSION

Defendant argues the trial court erred in confirming the arbitration award and permanent injunction and entering judgment in favor of Toyota. In light of the Ninth Circuit's recent decision in *Biller* affirming the district court's order enforcing the arbitration award, our first task is to determine the applicability of the doctrine of res judicata. As we explain below, we conclude the Ninth Circuit decision must be given res judicata effect, and therefore affirm the trial court's order on that basis. We need not consider the parties' remaining arguments.

" 'Where two actions involving the same issue are pending at the same time, it is not the final judgment in the first suit, but *the first final judgment*, although it may be rendered in the second suit, that *renders the issue res judicata in the other court*. [Citations.] Where the judgment in one suit becomes final through lapse of time or affirmance on appeal while an appeal is still pending in another court from judgment in the other action, the first final judgment may be brought to the attention of the court in which an appeal is still pending and relied on as *res judicata*. [Citation.]' " (*Baughman v. State Farm Mut. Auto. Ins. Co.* (1983) 148 Cal.App.3d 621, 624-625, some italics added; accord, *Consumer Advocacy Group, Inc. v. ExxonMobil Corp.* (2008) 168 Cal.App.4th 675, 684 [where two actions dealing with same controversy are pending in courts of concurrent jurisdiction, " ' "*the first final judgment* becomes conclusive, even though it is rendered in the action which was filed later in time" ' "]; 7 Witkin, Cal. Procedure (5th ed. 2008) Judgment, § 366, pp. 988-989.)

This rule applies equally when, as here, one of the concurrently-filed actions is pending in federal court. "[A] federal court may proceed concurrently with a state court, and a state court concurrently with a federal court, until the first judgment is rendered and becomes res judicata." (2 Witkin, Cal. Procedure, *supra*, Jurisdiction, § 435, p. 1089.) It has long been the rule that the judgments and decrees of the federal courts are afforded "the same dignity in the courts of that state as those of its own

courts in a like case and under similar circumstances." (*Stoll v. Gottlieb* (1938) 305 U.S. 165, 170; see also 7 Witkin, Summary of Cal. Law (10th ed. 2005) Constitutional Law, § 30, p. 113 [federal court judgments "entitled to equal res judicata effect under the constitutional judicial power of the United States, the Necessary and Proper Clause, and the Supremacy Clause"].)

"The doctrine of res judicata is applicable where the identical issue was decided in a prior case by a final judgment on the merits and the party against whom the plea is asserted was a party or in privity with a party to the prior adjudication." (*French v. Rishell* (1953) 40 Cal.2d 477, 479; accord, *Kimbrough v. Police & Fire Retirement System* (1984) 161 Cal.App.3d 1143, 1150.) The laudable purpose behind the doctrine is "to curtail multiple litigation causing vexation and expense to the parties and wasted effort and expense in judicial administration. It is well established in common law and civil law jurisdictions and is frequently declared by statute." (7 Witkin, Cal. Procedure (5th ed. 2008) Judgment, § 334, p. 938; see also Code Civ. Proc., § 1908; *Roos v. Red* (2005) 130 Cal.App.4th 870, 879.) " '[R]es judicata does not merely bar relitigation of identical claims or causes of action. Instead, in its collateral estoppel aspect, the doctrine may also preclude a party to prior litigation from redisputing *issues* therein decided against him, even when those issues bear on different claims raised in a later case.' " (*Roos v. Red*, *supra*, at p. 879.)

The parties were the same in the state action and in the federal action. The Ninth Circuit decision in *Biller* is a final judgment on the merits. (See generally Code Civ. Proc., § 1287.4 [judgment entered after arbitration has same force and effect as judgment in civil action]; 9 U.S.C. § 13 [same]; 7 Witkin, Cal. Procedure (5th ed. 2008) Judgment, § 364, p. 986; *Burdette v Carrier Corp.* (2008) 158 Cal.App.4th 1668, 1682 [federal rule provides that a judgment is deemed final until reversed on appeal, modified or set aside]; 7 Witkin, Cal. Procedure, *supra*, Judgment, § 372, p. 997 [judgment entered on confirmation of arbitration award binding judgment on the merits].)

We are left to resolve whether the Ninth Circuit decided the identical issues that defendant asserts here. Defendant argues the state court action raised an issue not resolved in federal court, whether the purported broader standard of review available in state court on the merits of an arbitration award justified an order vacating the award for errors of law committed by the arbitrator. We address, and reject, defendant's argument briefly below, but preface our analysis by saying we view the contention to be a red herring. Since the parties agreed their arbitration was to be governed by the Federal Arbitration Act, and the Ninth Circuit affirmed the award under the Federal Arbitration Act, the scope of review of an arbitration award under California law is of no import.

Defendant relies primarily on our Supreme Court's decision in *Cable Connection, Inc. v. DIRECTV, Inc.* (2008) 44 Cal.4th 1334 (*Cable Connection*). We find nothing in *Cable Connection* that is of any assistance to defendant. *Cable Connection* states that in " 'most important respects' " the California Arbitration Act at Code of Civil Procedure section 1280 et seq. (CAA) regarding enforcement of arbitration agreements and awards is similar to the Federal Arbitration Act at 9 United States Code section 1 et seq. (FAA). (*Cable Connection*, *supra*, at p. 1343.) This holds true for the general rule allowing only limited judicial review of arbitration awards. (*Id.* at p. 1344.) Under both the CAA and the FAA, judicial review is limited to similar statutorily enumerated grounds, such as acts in excess of the arbitrator's powers, fraud, and misconduct. (See, e.g., Code Civ. Proc., §§ 1286.2, 1286.6; 9 U.S.C. §§ 9, 10.)

As for more expanded review on the merits of the arbitration award, including to correct purported errors of law, the United States Supreme Court held, in *Hall Street Associates, L.L.C. v. Mattel, Inc*. (2008) 552 U.S. 576, that the FAA does not permit the parties to enlarge, by contract, the statutory grounds for review. (*Id*. at p. 584.) The California Supreme Court has held that parties in California who proceed under the CAA may contractually agree to expanded merits review by "explicitly and unambiguously" agreeing that legal errors by the arbitrator are in excess of arbitral

authority and reviewable by the courts. (*Cable Connection*, *supra*, 44 Cal.4th at pp. 1360-1361.) *Cable Connection* does not apply to our analysis because the Severance Agreement expressly states the FAA is to govern all of the dispute resolution provisions. The plain language of paragraph 8.4 provides that while California law is to govern the substantive terms of the Severance Agreement generally, the FAA will apply to the arbitration provisions, unless "a decision maker of competent jurisdiction" determines it did not apply. Defendant made no argument that such a decision maker was ever called upon to make such a decision.

The district court was the first to resolve the question of the enforceability of the final consolidated arbitration award and, as a federal forum, correctly used the FAA procedures governing enforcement of arbitration awards in rendering its decision. Both parties invoked the FAA framework in respectively seeking enforcement and vacatur of the award. Indeed, the Ninth Circuit explained that "in opposing the confirmation of the Arbitration Award before the district court, [defendant] did not contend that the CAA governed and the FAA did not." (*Biller*, *supra*, 668 F.3d at p. 663.)

Defendant had a full and fair opportunity in federal court to litigate the same claims of alleged defects in the arbitration award that he asserts here, including that the arbitrator failed to correctly apply California law, failed to address his affirmative defenses to Toyota's claims, and failed to issue a written decision sufficient to permit review under paragraph 8.4 of the Severance Agreement. He strenuously objected to the enforceability of the final arbitration award. Both the district court and Ninth Circuit addressed, and with well-reasoned analysis, rejected each of his arguments. The federal court decision was the first final decision entered, and it finally resolved on the merits the issue of the validity and enforceability of the consolidated arbitration award. That final judgment is binding on the courts of this state under the doctrine of res judicata.

DISPOSITION

The judgment is affirmed. Respondent Toyota shall recover its costs on appeal.

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GRIMES, J.

WE CONCUR:

BIGELOW, P. J.

FLIER, J.